

REMARKS

With entry of the amendments, claims 1-48 are pending in the application. Claims 2, 10, 15, 19, 27, 32-33, 39 and 44-46 have been amended, and claims 47 and 48 have been added. Support for claims 47 and 48 can be found on at least page 1, paragraphs 2-3, and in originally submitted claims 1 and 18, respectively. Applicants thank the Examiner for her indication that claims 2-4, 10-13, 15, 17, 19-21, 27-30, 33-34, 41-42 and 44 would be allowable if amended into independent form.

Claims 2, 10, 15, 27, 33 and 44 have been rewritten into independent form, and thus incorporate the limitations of the claims from which they depended. Therefore, claims 3-4, 11-13, 28-30 and 34, which depend from claim 2, 10, 27 and 33, respectively, now depend from allowable claims. Claims 2, 19 and 33 have been amended to specify that the actuator is coupled to the “frame” rather than the “lifting frame,” and the threaded crankshaft is coupled to the “lifting frame” rather than the “frame,” support for which can be found on at least page 8, paragraphs 45-46, and throughout the drawings. Claims 32, 45 and 46 have been amended to specify that the platform accommodates instruments having “legs of a fixed height,” support for which can be found on at least page 1, paragraphs 2-3 and page 10, paragraph 54. Claim 39 was amended to correct the antecedent basis of “percussion instrument.”

Claims 1, 5-9, 14, 16, 18, 22-26, 31-32, 35-40, 43 and 45-46 are variously rejected as follows. In view of the arguments below, Applicants respectfully request reconsideration on the merits of the application and allowance of the claims.

Claim Rejections under 35 U.S.C. § 102(a)

Claims 1, 5-9, 16, 18, 22-26, 32, 35-40, 43 and 45-46 are rejected under 35 U.S.C. § 102(a) as being anticipated by Yoshida (U.S. Publ. No. 2003/0029299). Applicants respectfully traverse the Examiner’s rejection on the basis that Yoshida does not disclose all of the limitations of the rejected claims.

Claims 1 and 18, and claims 5-9, 16 and 22-26 which depend directly or indirectly from claims 1 and 18, of the present application require “a first and second platform adjustably coupled to the lifting frame and adapted to be selectively moved in a horizontal direction relative to the lifting frame,” a limitation not disclosed in the Yoshida reference. The Examiner alleges this limitation is satisfied by “a pair of the bridge members 14” as described in the Yoshida

reference (Yoshida, ¶ 33). However, the “bridge members” of Yoshida’s instrument stand cannot be considered to be equivalent to the platforms of the present instrument lift as the bridge members are “adjustably coupled” to the lifting frame so as to be “selectively moved in a horizontal direction relative to the lifting frame.” The first and second platforms of the present invention can be adjusted in a horizontal direction to fit fixed height instruments of varying widths. No such adjustable sections are disclosed or taught by the Yoshida reference. The bridge members 14 appear to be a solid bar that is attached between the legs/lifting frame of the instrument stand of Yoshida. Neither the specification nor drawings of Yoshida disclose any structure analogous to a platform section that can move in a horizontal direction relative to the lifting frame to accommodate a percussion instrument. In fact, there is no need in the Yoshida patent to deal with instruments of varying widths, as the leg/lift stand of Yoshida is integral to the instrument itself. The operation of the lift stand of Yoshida involves modifying an instrument by removing its legs and directly connecting it to the frame (Yoshida, ¶ 30). Such modification is not required with the presently claimed invention. The claimed platform sections of claims 1 and 18 allow for the legs of the instrument to be supported by, or sit directly on, the platform sections of the instrument lift (Specification, ¶ 61). No such platform sections are taught or suggested by the Yoshida reference.

Likewise, Yoshida does not disclose all of the limitations of claim 32, 35-40, 43 and 45-46. As provided above, claims 32 and 45-46 have been amended to include the further limitation that the platform is “adapted to accommodate legs of a fixed height” instrument. Thus, claims 32 and 45-46, and claims 35-40 and 43 which depend directly or indirectly from claim 32, require that the platform be capable of accommodating instruments having a fixed height. Nowhere does Yoshida disclose that its instrument stand is capable of accommodating instruments having “legs of a fixed height.” Yoshida, in fact, requires that the instrument contain no legs, and be mounted directly to the lifting frame. Yoshida contains no teaching or suggestion of any structures that would allow an existing fixed height instrument to be connected to the lifting frame of Yoshida, without modifying the instrument by removing the legs and connecting the bottom of the instrument directly to the legs of the lifting frame itself.

Therefore, because Yoshida does not disclose all of the limitations of claims 1, 5-9, 16, 18, 22-26, 32, 35-40, 43 and 45-56, the rejection of these claims under 35 U.S.C. § 102(a) as being anticipated by Yoshida is improper. Accordingly, Applicants respectfully request that the rejection of these claims be withdrawn.

Claim Rejections under 35 U.S.C. § 103(a)

Claims 14 and 31 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Yoshida, in view of Ter Heide (U.S. Patent No. 6,096,955). The Examiner alleges that Yoshida discloses all of the elements of claims 14 and 31 except for the use of a handle. The Examiner further alleges, however, that Ter Heide discloses a percussion instrument lift with a handle attached to the frame. The Examiner concludes that it would have been obvious to one of ordinary skill in the art to modify the instrument disclosed by Yoshida to include the handles as disclosed by Ter Heide in order to control height adjustments.

Applicants respectfully submit that Examiner has failed to set forth a *prima facie* case of obviousness because all of the requirements for a *prima facie* case have not been met. The MPEP states that:

“To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant’s disclosure.”

MPEP § 2143; *see also In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

First, Applicants respectfully submit that the Yoshida and Ter Heide references fail to combine to teach or suggest all of the claim limitations of claims 14 and 31. As discussed in detail above, Yoshida does not teach or suggest the limitation of “a first and second platform adjustably coupled to the lifting frame and adapted to be selectively moved in a horizontal direction relative to the lifting frame” of claims 1 and 18, from which claims 14 and 31 depend, respectively. Further, the Ter Heide reference does not cure the deficiencies of the Yoshida reference in teaching or suggesting the platform sections as required by claims 14 and 31. The Ter Heide reference is also directed toward an integrated leg/lift system that contains no structure

analogous to a platform section that can move in a horizontal direction relative to the lifting frame to accommodate a percussion instrument. As in Yoshida, there is no need in the Ter Heide patent to deal with instruments of varying widths, as the leg/lift stand of Ter Heide is integral to the instrument itself.

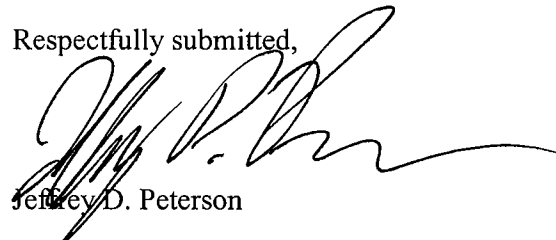
Second, Applicants submit that the Yoshida and Ter Heide references fail to provide a suggestion or motivation to combine or modify the references to teach or suggest a percussion instrument lift assembly having “a first and second platform adjustably coupled to the lifting frame and adapted to be selectively moved in a horizontal direction relative to the lifting frame” as required by claims 14 and 31. Further, the Examiner has not provided any evidence that one of ordinary skill in the art would possess the knowledge or be motivated to combine and/or modify either reference to teach or suggest this limitation of claims 14 and 31.

Therefore, because the Yoshida and Ter Heide references fail to combine to teach or suggest all of the claim limitations of claims 14 and 31, and fail to contain a motivation to combine and/or modify the references to teach or suggest all of the claim limitations of claims 14 and 31, the Examiner has failed to establish a *prima facie* case of obviousness. In view of the foregoing, Applicants respectfully request that the rejection of claims 14 and 31 under 35 U.S.C. § 103(a) be withdrawn.

SUMMARY

Based on the foregoing, Applicants respectfully submit that the present application is in condition for allowance, and a favorable action thereon is respectfully requested. Should the Examiner feel that any other point requires consideration or that the form of the claims can be improved, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jeffrey D. Peterson', written over the printed name.

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